

BOARD OF COUNTY COMMISSIONERS
LEON COUNTY, FLORIDA
SPECIAL MEETING
DECEMBER 16, 2003

Draft

The Board of County Commissioners of Leon County, Florida met in Special session with Chairman Sauls presiding. Present were Commissioners Thael, Winchester, Proctor, Rackleff, Maloy and Grippa. Also present were County Attorney Herb Thiele, County Administrator Parwez Alam, Deputy Clerk Bill Bogan, Jr., and Secretary Sandra C. O'Neal. The meeting was called to order at 2:00 p.m.

County Attorney Thiele explained that the purpose of the Special Meeting was to discuss the display of holiday decorations at Leon County facilities. Pursuant to the attached advertisement, a special meeting was conducted:

County Attorney Thiele provided an overview of the relevant issues regarding the Board's decision of November 25 and December 9, 2003 regarding the funding, construction and placement of a Menorah at the Courthouse. He explained significant factors that had arisen since the original Board action dated November 25, 2003.

Mr. Thiele reiterated the County Attorney's Office position, which was provided on December 9 and in memorandum form. It was guided by the U.S. Supreme Court decision, especially the one in Allegany County. It was the County Attorney's recommendation that the Menorah that was to be placed at the Courthouse could only be done so under circumstances that would not use public expenditure of funds and that it be placed in a location in a manner so as to mix in with other holiday decorations that are placed at a specific location on the Courthouse grounds.

Mr. Thiele pointed out that subsequent to the December 9th meeting, a number of circumstances and facts have arisen which slightly modifies his recommendation to the Board. He also voiced concern with regard to indirect costs that staff would incur with regard to placement of the 22-foot Menorah which includes staff involvement in the design and location of the Menorah, everyday maintenance and lighting of the Menorah, and labor and materials involved in its location. It was proposed, up until today, that the Menorah would be placed at the main entrance to the Courthouse next to the historic marker at the front door. It may or may not be the proposed location. Indirect costs have also incurred in the placement of the Menorah including concrete, the base fitting and digging of the hole using equipment and manpower.

Mr. Thiele noted that staff has also encountered a number of additional peripheral issues that have affected the Board's decision-making. It has now become a festival or celebration of sorts. Mr. Thiele voiced serious concern with regard to overall use of the County facilities directly or indirectly for a festivity that clearly has connotations related to religion. It was subsequently pointed out to the County Attorney that there is a website by the Chabad in Tallahassee that indicates there is a Hanukkah Celebration to take place, at least in part, physically on the Courthouse grounds as part of the lighting ceremony for the Menorah. There was also an article in the Religion Section of the Tallahassee Democrat last Saturday and members of the community have received a brochure in the mail indicating the same.

As pointed out by Mr. Thiele, there is also the issue that involves a facility that is different than some other public facilities because the Courthouse is not only the seat of County government, home of the

County Commission, but it is also the Circuit Court and County Court building.

Mr. Thiele explained that for the reasons listed today and in the November memorandum, it is his recommendation that the Board approve Option 1 which includes rescinding the Board's prior action of December 9, 2003 and, for this holiday season, to not fund the purchase of the Menorah or any of the costs to erect the Menorah on the Courthouse grounds.

Commissioner Grippa moved and was duly seconded by Proctor to approve Option 1: Rescind the Board direction of December 9, 2003, requiring the County to fund an amount not to exceed \$7,000 for a 22-foot Menorah to be erected and displayed on the Courthouse lawn. The motion carried unanimously, 6/0 (Commissioner Thaell was absent).

Mr. Thiele advised that the Supreme Court found that a Christmas tree or holiday tree has now reached a level of virtually secular status however a Menorah still has vestiges of both religious aspect and secular aspects and is the reason the Supreme Court said that no public funds could be spent on purchasing or constructing such an object. Secondly, to the extent that one was allowed, it had to be in a location where other holiday decorations were allowed and of a like kind.

Commissioner Grippa raised the question: Would it be illegal for the County to put a Menorah next to the Christmas Tree if no public funds were expended. In response, Mr. Thiele stated that if he were asked that question on November 25th, he would have advised that it would not have been a problem to do so. He opined that, today, there is an "establishment clause" problem; that the County has now enter-mixed the status, the government with the religious aspects of the Menorah, the holiday celebration known as Hanukkah and all of the other religious aspects connected to that object (conducting of religious ceremony on the property, lighting of the Menorah, location). It has gone beyond the neutral issue that was presented to the Board as late as December 9th.

Commissioner Grippa advised that he has researched other municipalities in Florida who have allowed Menorahs to be erected at public facilities without using tax dollars.

Following some discussion, Commissioner Grippa moved and was duly seconded by Commissioner Winchester to allow a Menorah, the one that is contemplated wherein, to be placed on the Courthouse property next to the Christmas tree, without using tax dollars for the erection.

Mr. Thiele opined that it would be best to declare a "half-time" and perhaps not to do anything this year or have another structure similar to the one the City had, and place it near the holiday tree area. Staff could work, in the interim, before the next holiday season on a better opportunity to locate the one large metallic Menorah that has been proposed. The one that was at the City last year was approximately 6 - 8 feet tall. The one proposed for the County is approximately 22-feet tall with an open flame and other things that would potentially draw attention to it. Mr. Thiele stated that he is not saying that the County could not have an object like that but in light of all the circumstances that have lead up to today, he felt that the County would be in its best legal posture to pass on erecting the proposed structure and allow the one that is similar to the City. Another item of concern mentioned by the County Attorney was risk management issues and liability insurance, particularly if someone other than staff comes on the Courthouse grounds and lights the Menorah at night.

Commissioner Winchester talked about the structural integrity of the Courthouse and referred to a memorandum from Commissioner Thaelle regarding the issue. County Administrator Alam and Facilities Management Director Tom Brantley advised that the 3 X 3 concrete base that the Menorah would go on would go beneath the earth, above the parking garage, and the total weight for the Menorah and concrete base would be approximately 7,000 pounds. Staff has identified two column lines in the parking garage that would be adequate for the support of the Menorah. If the location were to be moved where it was not immediately above a column, there would be a problem since it is weight restricted. Mr. Brantley explained that the cost for materials for the County would be \$400 - \$500 and if staff labor is included, the price could double.

Commissioner Rackleff moved a substitute motion to accept the advice of the County Attorney and do not support placing a Menorah on the Courthouse lawn this year. The motion was declared dead for lack of a second.

It was noted that apparently since December 10, 2003, there has been dialogue going on with staff and Rabbi Oirechmen regarding the size of the Menorah. There was an expectation given to Rabbi Oirechmen that a Menorah would be placed at the Courthouse. County Administrator Alam explained that Commissioner Thaelle's Aide, Martin Green, has been working with Rabbi Oirechman regarding the Menorah. Facilities Management Director Kim Dressel explained the sequence of events since Commissioner Thaelle's request in December 2002 of having a Menorah display in 2003. In July of 2003, Commissioner Thaelle contacted Facilities Management and asked about the status and gave staff the name of Rabbi Oirechmen. Staff contacted Rabbi Oirechman who told

them that he wanted a 25-foot Menorah. Facilities Management then advised County Administrator Alam who emailed Commissioner Thael and Mr. Green that this issue would need to go to the Board for further consideration.

Chairman Sauls announced that Commissioner Thael provided her with her a memorandum dated today, which would be made a part of the record.

See attached:

The following citizens appeared:

Mallory E. Horne, 12487 Meridian Road, appeared before the Board to represent the Chabad. He stated that there are two constitutional rights that are at issue: establishment clause, which prohibits government from favoring one religion over another, and freedom of speech.

John Rosner, 718 Lothian Drive, appeared and voiced support for the Menorah. He stated that display of the Menorah as proposed is purely a secular celebration of a happy time of the season and they are found all over the country, in places such as Central Park in New York, at the beach and in front of the Whitehouse. Mr. Rosner pointed out that in the United States, in the 21st Century, both Christian and Jewish religious observances have developed significant secular attributes and that is what is being celebrated by the display of a Christmas tree and a Menorah, and people are aware of that.

Howard Eagelfeld, 2412 Needle Palm Way, stated that the proposed eight-branch Menorah that is being proposed is not a religious object per se and cannot fulfill anyone's religious obligation, but it is a symbol of the holiday. He explained that the symbol of the religion is a seven-branch candelabrum. Mr. Eagelfeld urge the Board to not favor one religious symbol over another.

Joe Belitzky, 2691 Nantucket Lane, stated that the Christmas tree and the Menorah are both religious and have secular connotations as well. He stated that he supports the Christmas tree and the erection of the Menorah and if the Menorah is not allowed to be erected on County property, then it would constitute discrimination.

Mimi Shaw, 1635 N. Monroe Street, talked about various interpretations of the Menorah, pointed out that it was a holiday season for everyone, and implied that the Menorah could be called a Jewish work of art like the Christmas Tree could be called a holiday tree. She urged the Board to carefully consider their decision today.

Rabbi Schneur Oirechman, 2093 Greenwood Drive, appeared and explained the sequence of events after the Board's decision on November 25, 2003. He stated that he met with County staff and his engineer about erecting the 22-foot Menorah, and on December 9th, the Board approved the funding, and subsequently he ordered the parts for the Menorah. On December 13th he received a call about the Board reconsidering their funding approval. Rabbi Oirechman indicated that he felt that he had the right to ask for the money for the Menorah since the County spent some \$15,000 on Christmas decorations. In order to avoid any negative feelings and for the benefit of the Menorah, Rabbi

Oirechman withdrew his request for funding the Menorah, but requested that the Board allow the Menorah to be erected at the Courthouse in honor of Hanukkah.

Ron Bunting, 1510 Old St. Augustine Road, stated that he supports separation of church and State and he would be offended if tax dollars were used to erect a Menorah, Christmas tree, or any religious symbols at a government facility.

Chet Kaufman, 3301 Lucky Debonair Trail, appeared and stated that he represents the American Civil Liberties Union of Florida. He stated that ACLU defends the Bill of Rights and supports freedom of religion and one of the key issues is for government to keep their hands off religion and to remain neutral. Mr. Kaufman explained that public perception is pivotal to the U.S. Supreme Court's view; what is public perception of what government is doing; the standard is whether a reasonable informed person seeing and knowing the entire context of what the government is doing could perceive that the government's action is endorsing or supporting any kind of religious message. Mr. Kaufman urged the Board to not engage in religious symbolism such as the Menorah. He also advised that he talked with the City Attorney and they have not been approached about erecting a Menorah.

Robert Rivas, 7333 Ox Bow Circle, voiced concern about the weight of the proposed object being placed on top of the Courthouse parking garage. He raised the questions: What happens when another organization asks to place a large heavy symbol or object on the Courthouse grounds above the parking garage? Is there a County policy that prohibits religious organizations from having a daily prayer meeting on the grass in front of the Courthouse? If there is, will there be a series of exemptions to the policy? Since these questions and other broader public policy questions have not been addressed by Leon County, at this time, he supports the County Attorney's view.

Charles Kahn, 2744 Everett Lane, stated that he is Jewish and most Jewish people do not seek a partnership with the government. He is seeking only tolerance and support from the Board and stated that the Menorah is definitely a religious symbol.

Allen Grossman, 3316 Charleston Road, explained that he is president of Tallahassee's Conservative Jewish Congregation Shomrei Torah and a member of the Florida Regional Board of the Anti-Defamation League. He stated that clearly and unequivocally that the Hanukkah Menorah is a religious symbol and is generally recognized as a symbol of the Jewish Faith. He indicated the importance of celebrating religious freedom but pointed out that it would be ironic and unfortunate to allow government

action, no matter how well intentioned, to create divisiveness during this joyous holiday season.

Mercedes Nunez, 4945 Outlook Court, stated that she does not think that the Christmas tree is a religious symbol but a pagan symbol. She indicated that the Christmas symbol is a nativity scene. Ms. Nunez remarked that she is not opposed to allowing religious symbols but pointed out that all religious symbols would have to be allowed at the Courthouse.

Dr. Joel Shugar, 1704 E. Gulf Beach Drive, St. George Island, indicated that since there is a Christmas Tree at the Courthouse, there should be accommodations for a Menorah. He indicated the importance of celebrating a glorious event.

Commissioner Maloy suggested that between now and next holiday season that legal staff develop an appropriate policy to address this issue. County Attorney suggested a policy to address the structure and use of the facility.

The motion on the floor failed 2 – 4 (Commissioners Sauls, Maloy, Rackleff, and Proctor voted in opposition).

Commissioner Grippa moved to erect a six-foot Menorah at the Courthouse, like the one the City previously placed at the airport and City Hall; if the City does not put up a Menorah this year, the County will not put up one either. Commissioner Winchester seconded the motion with a friendly amendment to allow any symbol to be displayed.

Following some discussion, Commissioner Winchester withdrew his second and Commissioner Grippa withdrew his motion.

Commissioner Proctor moved and was duly seconded by Commissioner Maloy, to follow the County Attorney's advise and not erect a Menorah on County property this year. County Attorney Thiele explained that between now and next December it is possible that legal staff would work out something that would be legally acceptable. The motion carried unanimously, 6/0 (Commissioner Thael was not present).

Commissioner Proctor brought the Board's attention to the fact that the jail population is 70% black and urged that something be done to address the disproportionate number and the oppression of the black community.

The Special meeting ended with the Pledge of Allegiance to the Flag.

There being no further business to come before the Board, the meeting was adjourned at 3:27 p.m.

APPROVED: _____

Jane Sauls
Chairman

ATTEST:

Bob Inzer
Clerk of the Circuit Court